IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 37 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME TAX

Versus

CHANDRAVILAS RESTAURANT

Appearance:

1. INCOME TAX REFERENCE No. 37 of 1992

MR MANISH R BHATT for Petitioner No. 1

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 24/03/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question has been referred for our opinion for A.Y. 1983-84 :-

"Whether, in law and on facts, the Tribunal is right in law in holding that salary paid to Shri Ramanand Joshi was not excessive or unreasonable so as to fall within the purview of Sec.40A(2) of the I.T. Act ?"

2. We have heard Mrs Mauna Bhatt, learned standing counsel for the revenue. Though served, none appears for the respondent-assessee.

3. Although the question makes a reference to Shri Ramanand Joshi, we find from the assessment order, the appellate order of the CIT(A) as well as the order of the Tribunal giving rise to this reference, the name of the concerned member of the Association of Persons is "Shri Parmanand Joshi".

4. The only question which is required to be considered is whether the salary paid to Shri Ramanand Joshi, one of the members of the assessee-Association of Persons, was excessive or unreasonable so as to fall within the purview of Section 40A(2). On this issue, the Tribunal has noted the following facts :-

"The following salary/remuneration were paid to the various members of the respondent :-

Shri Laxmishanker Joshi Rs.18,000/-
Shri Parmanand Joshi Rs.45,000/-
Shri Ramesh Joshi Rs.15,000/-
Maulik Joshi Rs.18,000/-
Malay Joshi Rs.18,000/-
Malav Joshi Rs.18,000/-"

The higher salary to Shri Parmanand Joshi was justified on account of his vast experience of 35 years in the line of the business and he was the senior most member of the respondent-Association of Persons. The assessee justified the higher salary of the said member on the ground that it was due to his experience and dedication to the business that the assessee recorded a significant increase in its profit in comparison to the losses returned by the firm in the earlier years. Thus, on account of the seniority, experience and the specific services rendered by Shri Parmanand Joshi, higher salary was justified.

5. In our view, in the facts and circumstances of the case, the Tribunal was right in holding that the salary paid to Shri Parmanand Joshi was not excessive or

unreasonable so as to fall within the purview of Section 40A(2) of the Income-tax Act, 1961. Accordingly, our answer to the question is in the affirmative i.e. in favour of the assessee and against the revenue.

The reference accordingly stands disposed of.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

sundar/-